IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 9.3.2007.

CORAM

THE HON'BLE MR.JUSTICE M.JEYAPAUL

W.P.Nos.1991/96, 11133/98,
1932/2003 and 4533/2004

W.P.No.1991/96

R.Veeraragavan — Petitioner

vs.

The State of Tamil Nadu rep. By
the Secretary to Government,
Law Department,
Madras 600 009. — Respondent

W.P.No.11133/98

1. D.Govindarajulu
2. R.Isreal Amirtha Raj
3. R.Parthasarathy
4. M.Ramachandran
5. Gokul Anand — Petitioners

vs.

1. The State of Tamil Nadu rep. By
   it Secretary, Law Department.

2. The Bar Council of Tamilnadu,
   rep. By is Chairman

3. The Tamilnadu Advocates
   Association rep. By its
   President.

4. The Chairman,
   The Trustee Committee,
   The Tamilnadu Advocates'
   Welfare Fund. — Respondents

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W.P.No.1932/2003

S.Seshachalam Petitioner

vs.

1. The Secretary to the Government,
   Law Department,
   Fort St. George, Chennai 600 009.

2. The Chairman,
   The Bar Council of Tamilnadu,
   Chennai 104.

3. The Tamilnadu Advocates
   Association rep. By its
   President,
   M.H.A.A., High Court Buildings,
   Chennai 104.

4. The Chairman,
   The Trustee Committee,
   The Tamilnadu Advocates'
   Welfare Fund,
   Bar Council of Tamilnadu,
   Chennai 104. Respondents

W.P.No.4533/2004

1. A.L.Namasivayam
2. R.Nagarajan
3. I.Irulappan @ Ramanathan
4. P.Gangadharan
5. V.Srinivasan
6. R.Shankar Petitioners

vs.

1. The Secretary to the Government,
   Government of Tamil Nadu,
   Law Department,
   Fort St. George, Chennai 600 009.

2. The Chairman,
   The Bar Council of Tamilnadu,
   High Court Buildings, Chennai 104.

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3. The President,
   The Tamilnadu Advocates
   Association (M.H.A.A.)
   High Court Buildings,
   Chennai 104.

4. The Chairman,
   The Trustee Committee,
   The Tamilnadu Advocates'
   Welfare Fund,
   Chennai 104. Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying to issue writ of declaration.

WP.1991/1996 :- declaring that the proviso to Explanation 11(5) Section 16 (1) of the Tamil Nadu Advocate welfare fund (Amendment) Act 1995. Where a member of the fund dis his nominee or legal heir, as the case may be shall be paid an amount of one lakh rupee provided that if such member who, before his death, was in receipt of pension, gratuity or other termined benefits from any state government or the central Government or other authority or employer his nominee of legal heir, as the case may be shall not be entitled for the payment of the amout of one lakh rupees under this sub section as nul and void being violative of art.14.

WP.11133/1998 and WP.4533/2004 : Declaring the proviso to sub (5) of Sec.16 of the Tamil Nadu Advocates welfare fund (Amemdment) Act 43 of 1995 as nul and void holding the said proviso as ultra vires of the constitution of India so far as the petitioner is concerned.

WP: 1932/2003:- Calling for the records relating to family welfare benefit under Act 49/1987 and quash the reply dated 18.12.2002 TNAWF.NO.2519/2002 dt-18.12.2002 of the second Respondent herein and issue suitable direction.

For petitioner
in W.P.No.1991/96 : Mr.V.Prakash, Senior Counsel for
Mr.R.Venkatakrishnan

For petitioners
in W.P.No.11133/98 : Mr.R.Dharanikumar

For petitioners
in W.P.Nos.1932/2003
and 4533/2004 : Mr.S.Seshachalam

For respondent : Mrs.C.K.Vishnu Priya,
Government Advocate

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COMMON ORDER

The common prayer in all these writ petitions is to issue a writ of declaration declaring that the proviso to Explanation II (5) to section 16 (1) of the Tamil Nadu Advocates Welfare Fund (Amendment) Act, 1995 as null and void being violative of Article 14 of the Constitution of India.

2. As it is felt that common pleading have been putforth by both the parties aiming at the same object all the four matters have been clubbed together for common disposal.

3. The brief averments in these petitions seeking issue of writ of declaration are as follows:-

The petitioners are the retired officials from various Departments. Immediately on their retirement, they, having been qualified with Law Degree, enrolled themselves as Advocates and commenced their practice. The Tamil Nadu Advocate Welfare Fund Act, 1987 was enacted for providing succour to the Advocates community. Those who become the member of the Fund are entitled to the benefits of the Welfare Fund under the Act. All the Advocates affix the Welfare Stamps on the vakalats filed by them before various courts. It has become mandatory under section 23(1) of the Act to affix the Welfare Stamp on the vakalat. Government of Tamil Nadu have introduced an amendment to the Advocates Welfare Fund Act, 1987. Among other amendments, Explanation II (5) to section 16 was substituted by a new sub section. As per the proviso found therein, the legal heirs of an Advocate who was in receipt of pension, gratuity or other terminal benefits from any State Government or the Central Government or the other authority or employer shall not be entitled to the payment of the lumpsum amount of Rs.2,00,000/= on the death of such an Advocate. Such a proviso is contrary to the preamble. The classification is totally arbitrary and unreasonable. There is no rationale behind the introduction of such an amendment. The equity principle enshrined under Article 14 of the Constitution of India was violated. Therefore, such a proviso is ultra vires the Constitution of India. Therefore, the petitioners seek issue of a writ of declaration as state supra.

4. The sum and substance of the counter filed by the respondents reads as follows:-

The proviso to Explanation II (5) to section 16 of the Tamil Nadu Advocates Welfare Fund Act, 1987 imposes a reasonable condition that a legal heir of an Advocate who was in receipt of pension, gratuity or other terminal benefits from any State Government or the Central Government or any other authority or an employer shall not be entitled to payment of the lumpsum amount under the scheme of the Act. The Advocates Welfare Fund

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has been created as a measure of succour to the learned Advocates who have taken up the profession of Law as their career from the beginning and fully committed to the profession of law and remain as an Advocate on the rolls of the Bar Council. In the case of those employed in any other Department, they take the Law Course in Evening College/Day College in any other part of the Country and after remaining in service for full tenure until the attainment superannuation, receive the terminal and retirement benefits such as gratuity, provident fund and compensation in certain cases from their employer and also continue to receive monthly pension for their services already rendered to their erstwhile employers. Having obtained the Law Degree from other Universities, they apply for Enrollment and become Advocates on the rolls of Bar Council of Tamil Nadu. A separate schedule has been provided to take care of the welfare of those Advocates also. The petitioners have become members to avail such benefits. The petitioners should be content with the amount of welfare measure provided to their family. Such Advocates are found settled already in life. After retirement, they come to enjoy their retirement life in this profession of law. The Tamil Nadu Advocates Welfare Fund Act do not discriminate any class of persons and as a matter of fact, it imposes only a reasonable restriction. Therefore, they pray for dismissal of the writ petitions.

5. Learned Senior Counsel for the petitioners would submit that the classification, as such, does not reflect rational nexus to the object sought to be achieved. The object of the Act is to lend succour to the financially needy even after the demise of an Advocate by profession. But, quite, unfortunately, the Advocates who had retired from service getting a paltry pension or other retiral benefits have been unreasonably segregated without verifying their financial status. Therefore, the group identified from the others was not based on intelligible differentia. The financial criteria was not taken as a norm for classifying a group of Advocates. Therefore, the proviso introduced by the Amendment Act, 1995 has to be struck down as unconstitutional.

6. It is submitted on the side of the respondents that the segregation has been made taking into account the qualitative difference between Advocates who enter into the profession with all devotion required of the profession and the retired employee-Advocates who access to the legal profession during their evening of life after enjoying all facilities in the organisation. They are entitled to get benefits under the schedule provided under the Welfare Fund Act. Further, the persons like petitioners, having completed their Law Degree clandestinely through some Universities outside the State, enter into the profession. They are not wedded to the profession inasmuch as they had opted for some other lucrative job during their prime time. The Advocates, who had already been employed and got all retiral benefits from the employer, form themselves as a class. By no stretch of imagination, it can be stated that it is irrational classification. Therefore, it is submitted that the writ petitions merit no consideration.

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7. The object of the Tamil Nadu Advocates Welfare Fund Act, 1987 reads as follows:-

> "An Act to provide for the constitution of a Welfare Fund for the benefit of Advocates on cessation of practice and for matters connected thereon with or incidentally thereof in the State of Tamilnadu."

It is also relevant for the disposal of this case to incorporate the provision under 16 of the said Act which reads as follows:-

> "16. Payment of amount on cessation of practice:
>
> 1) Every advocate who has been a member of the Fund for a period of not less than five years shall, on his cessation of practice be paid and amount at the rate specified in the Schedule:
>
> 1-A) "Notwithstanding anything contained in sub-section (1), every member of the Fund who has completed or completes twenty-five years of practice as an advocate on the date coming into force of the Tamil Nadu Advocates Welfare Fund (Amendment) Act, 2000 shall, on completion of five years as a member of the Fund and on his cessation of practice, be paid a lumpsum amount of one lakh rupees"
>
> (w.e.f. 1.2.2001)
>
> Provided that where the Trustee Committee is satisfied that a member of the Fund ceases to practise within a period of five years from the date of his admission as member of Fund as a result of "any permanent physical or mental disability" the Trustee Committee may pay the member of the Fund an amount at the rate specified in the Schedule:
>
> Explanation I:
>
> For the purposes of calculating the number of years standing of a member of the Fund for the purpose of this sub-section every four years of practice as an advocate before the admission of a member to the Fund shall be counted as one year's standing and every year of practice over and, above four years before such admission shall be counted equivalent to three months standing and the total number of years of standing so counted shall be added to the number of years of practice.
>
> Explanation- II:
>
> 1) The period during which a member of the Fund remained under suspension shall not be considered for the purpose of counting the years of standing.
>
> 2) Where a member of the Fund dies before receiving the amount payable under sub-Section

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(1), his nominees or legal heir, as the case may be shall be paid the amount payable to the deceased member of the Fund.

3) Any person removed from the membership in the Fund under sub-section (5) of Section 15 and re-admitted to the Fund under sub-section (6) of that section shall not be entitled to payment of any amount from the Fund under this Act during the period between the date of his removal from the membership in the Fund and the date of re-admission.

4) Any member who is suspended by the Bar Council for misconduct under the Advocates Act 1961 (Central Act 25 of 1961) shall not be entitled to payment of any amount from the Fund under this Act for the period of such suspension.

5) Where a member of the Fund dies, his nominee or legal heir, as the case may be, shall be paid an amount of two lakh rupees;

Provided that if such member who, before his death, was in receipt of pension, gratuity or other terminal benefits from any State Government or the Central Government or other authority or employer, his nominee or legal heir, as the case may be, shall not be entitled for the payment of the amount of two lakh rupees under this sub-section.

(w.e.f. 1.2.2001)

6) Every member or his nominee or legal heir, as the case may be shall apply for payment out of the Fund to the Trustee Committee in such form, as may be prescribed.

7) Where a person who has been paid an amount under sub-sections (1) or (1-A) has been admitted as an advance again under Section 24 of the Advocates Act, 1961 (Central Act 25 of 1961) desires to be re-admitted to the Fund shall, on an application made in the same manner as specified in sections (1) or (1-A) as the case may be with interest calculated at the rate of twelve percent per annum, be readmitted to the Fund. He shall not be entitled to payment of any amount from the Fund under this Act, during the period between the date of his cessation of practice and the date of readmission.

w.e.f. 15.1.1996"

What is now under attack is the proviso found in section 16 Explanation II (5) of the Act. The legal heirs of the member of the Fund who has been in receipt of pension, gratuity or other terminal benefits from any State

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Government or the Central Government or the other authority or employer are not entitled to the lumpsum payment of Rs.2,00,000/= as per the said proviso.

8. The State shall not deny to any person equality before law or the equal protection of laws within the territory of India as per Article 14 of the Constitution of India. Though the aforesaid Article prohibits any class legislation, reasonable classification has been permitted. But, such a classification introduced by way of legislation shall never be arbitrary. The classification should reflect the real or substantial distinction and it should be firmly founded on an intelligible differentia and the differentia must have close nexus to the object sought to be achieved by such piece of legislation.

9. Under the Tamil Nadu Advocates Welfare Fund Act, 1987, the legal heirs of Advocates who had received pension, gratuity or other terminal benefits from the employer have been segregated and classified as a separate group. The financial criteria does not appear to be the basis for such a classification. A new incumbent who starts his practice with all the resources at his hand may carve a niche in the legal profession and earn a lucrative amount. A fairly Senior Lawyer may reach an arena which is meant only for a privileged few in the legal profession. The enviable fee structure of such class of elite Advocates is anybody's guess. But, one cannot deny the fact that many of the Junior Advocates encounter teething problems in the vast arena of legal profession. A fairly Senior Advocate may not also be financially very sound. Likewise, there are Advocates who, having laid down their job, set up a roaring practice. Many of the Advocates who retire from service from various Departments of the Government and Private Sector set up their practice during the evening of their life to earn a living. They in fact suffer financilly in silence. We cannot blindly jump to a conclusion that only the Advocates who enter into the profession straight from the Law College are wedded to the profession. Some of the persons who had been disciplined soldiers in various Departments, come and join the Bar and take up the profession very seriously even during their evening of life.

10. We can safely come to the conclusion that there are Advocates from both sides who are financially weak even at the fag end of their profession. The object of the Act is to lend succour to the legal heirs of such Advocates after their demise. The impugned proviso does not classify the group of Advocates based on the financial soundness. There may be a case where a person who had put in two or three years of service in an Organisation would have opted out of such Organisation with a bare minimum contribution he had made towards Provident Fund and set up his practice. Such persons who had plunged headlong in the legal profession with all devotion have also been excluded from the purview of the benefits of the Act. There may be a case where a person would have retired as an Executive receiving sumptuous terminal benefits and pensional package. At the same time, we cannot also forget a class of persons who put in about 20 or 25 years of service in an Organisation and come out of it with unattractive terminal benefits and pensional package. A person who joined

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an Organisation as a Clerk may retire unfortunately as a Clerk. His terminal benefits and the retiral package may not be very lucrative. He may take up the legal profession with all sincerity and dedication. Such Advocates are also sidelined from the application of the benefits of the Tamil Nadu Advocates Welfare Fund Act.

11. The Advocates, who pay membership fee, subscription fee and affix the Welfare Stamp alone are entitled to the benefits under the Tamil Nadu Advocates Welfare Fund Act. All of them profess advocacy on equal footing. It is not as if all the advocates who set up their practice after their retirement from service are well off and all their financial needs are taken care of by the retiral benefits. Most of such persons enter into the legal profession after the retirement or during the midway of their assignment as their financial position even after retirement is appalling. There are Advocates who have put in 20 or 25 years of service in the legal profession even after their retirement from Government Service or Private Organisation. There may be Advocates who had just put in practice for about 3 or 4 years and thereafter, they would have breathed their last. When the family members of the Advocates who had set up their practice straight from the Law College for two or three years are entitled to the benefits of this scheme, it would be unjust to deny the very same benefits to the elderly members of the Bar, who fortunately or unfortunately had been to some other service and ultimately decided to start their practice in the legal profession. If it is the intendment of the Act to exclude the retired employee-Advocates on the ground that they receive sumptuous retirement benefits, the Senior Advocates who are well off after putting in a fair number of years of service also will have to be necessarily excluded. Even amongst the retired employee Advocates, there is a lot of difference in the financial package they receive. All such persons, therefore, cannot be clubbed as a class by themselves.

12. It is submitted that the retired employee-Advocates had enjoyed various benefits during their service in an Organisation but, such facilities and amenities had not been tasted by the Advocates during their initial period. One thing we will have to bear in mind is that all employees who put in service in an Organisation do not enjoy the star facilities during their service. In fact many of them, having dedicated their heart and soul to the Organisation come out therefrom as a skeleton heart-less and soulless. That is one of the reasons why such retired employees who are armed with a Law Degree enter into the profession. Further, we cannot arrive at a conclusion that the fresh entrants to the legal field alone are wedded to the profession and not the retired employee-Advocates.

13. It is complained by the Bar Council of Tamil Nadu that some persons who had obtained the Law Degree stealthily from far off Universities, enroll themselves before the Bar Council of Tamil Nadu. We cannot forget the fact that the Law Degree holders who are found competent to practice in the legal profession by the Bar Council of Tamil Nadu enrol themselves as Advocates. Therefore, the Bar Council of Tamil

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Nadu cannot be heard to say that some incompetent Law Degree holders also surruptitiously enter into the profession. Now, the basic Law Degree can be obtained throughout India only by taking a full time course in a recognised Law College. No one can now take a Law Course in an evening college or through correspondence course and complete their educational pursuit and join the legal profession. It is quite uncharitable to brand all the retired employee- Advocates as incompetent for they lack commitment to the profession and devotion to the supreme and noble duty as an Advocate.

14. While denouncing the discrimination practised in the Life Insurance Corporation of India by making applicable a term policy only to a salaried class from Government, Semi Government or reputed commercial firms, the Honourable Supreme Court observed in L.I.C. OF INDIA v. CONSUMER EDUCATION AND RESEARCH CENTRE (AIR 1995 SC 1811) as follows:-

> "It is true that the appellant is entitled to issue the policy applicable to a particular group or class of lives entitled to avail contract of insurance with the appellant but a class or a group does mean the classification meet the demand of equality, fairness and justness. The doctrine of classification is not a subsidiary rule evolved by the Courts to give practical contend to the doctrine of equality, over-emphasis on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. The over-emphasis on classification would inevitably would result in substitution of the doctrine of classification to the doctrine of equality and the Preamble of the Constitution which is an integral part and scheme of the Constitution."

If the classification does not meet the demand of equity, fairness and justness, such a classification is hit by Article 14 of the Constitution of India, it has been further ruled therein.

15. Therefore, the segregation and classification of the retired employee-Advocates as a class without adverting to their financial status is found to be a discrimination obnoxious to the star Article 14 of the Constitution of India. The differentiation between the Advocates who had set up their practice demitting the office in an Organisation and the Advocates who set up their practice straight from the Law College is not found intelligible and rational. When the petitioners also discharge the very same nature of work as that of the Advocates straight from the Law College and they also adhere to all the other mandates under the Welfare Fund Act, it is quite discriminatory to group them as a separate class to deprive them of the benefits flowed from Explanation II (5) of Section 16 of the Tamil Nadu Advocates Welfare Fund Act. For the foregoing reasons, I find that the proviso found in section 16 Explanation II(5) of the Tamil

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Nadu Advocates Welfare Fund Act, 1987 is ultra vires the constitutional mandate of equality before law and equal protection of laws enshrined under Article 14 of the Constitution of India. Such a proviso has to be struck down to maintain equality amongst the Advocates as a class.

16. In the above circumstances, proviso to Explanation II(5) of Section 16 of the Tamil Nadu Advocates Welfare Fund Act, 1987 is struck down and the writ petitions stand allowed as prayed for. There is no order as to costs.

ssk.

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to the Government,
   Government of Tamil Nadu,
   Law Department,
   Fort St. George, Chennai 600 009.

2. The Chairman,
   The Bar Council of Tamilnadu,
   High Court Buildings, Chennai 104.

3. The President,
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4. The Chairman,
   The Trustee Committee,
   The Tamilnadu Advocates'
   Welfare Fund,
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+1 cc to Mr.K.Venkatakrishnan, Advocate Sr.No.14620.

+1 cc to Mr.R.Venkatakrishnan, Advocate Sr.No.15526.

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